



**HUMAN RESOURCES OFFICE
TECHNICIAN / AGR ADMINISTRATIVE INSTRUCTION**

Number: 05-29

2 June 2005

**PROCESSING CLAIMS FOR ANNUAL LEAVE RESTORATION
UNDER BUTTERBAUGH v. DEPARTMENT OF JUSTICE**

1. Public Law 106-554, enacted 21 December 2000, changed the way military leave was processed. Prior to enactment, military leave was chargeable in whole-day increments and periods of non-duty (such as weekends and holidays) were also chargeable. As a result, employees were forced to take annual leave or leave without pay to complete their annual training. With the new law, military leave is now charged in one-hour increments and leave will not be charged for periods of non-duty.
2. Under *Butterbaugh v. Department of Justice*, 336F.3d 1332 (Fed. Cir. 2003), the court ruled agencies should not have charged military leave for non-workdays that occurred within the period of military duty.
3. The *Butterbaugh* decision applies to Federal employees who are National Guard Military Technicians who may have been improperly charged military leave resulting in the loss of annual leave.
4. Under the Barring Act of 1940, a leave claim against the Government must be received within six years after the claim occurs. **Memorandum dated 13 April 2005 from the Office of the Under Secretary of Defense establishes the start date for all claims.** For example, if a technician files a claim on 15 June 2005, the Directorate for Human Resources will consider any period of military service between 15 June 1999 and 21 December 2000, amended date of 5 U.S.C. 6323(a), for crediting annual leave. Technicians charged military leave for non-workdays may submit a written request (claim) for leave restoration through the Directorate for Human Resources. The burden of proof* supporting restoration of leave is on the technician and the following information **must** accompany each claim:
 - a. Memorandum through the Human Resources Office to DFAS requesting, documenting, and identifying period(s) claimed to include work schedule, leave type taken, and date of each non-work day and POC information with home address;
 - b. Identify current servicing payroll office;
 - c. Copy of orders for each period of performance claimed);
 - d. Certification of attendance;
 - e. Leave and earnings statements (LES) or other documentation indicating military leave was charged for non-workdays.

*** Failure to provide the above documentation will result in your request being returned without action.**

TAAI 05-29, dated 2 June 2005

SUBJECT: Processing Claims for Annual Leave Restoration under Butterbaugh v.
Department of Justice

5. Technicians will be credited for one day of annual leave for each non-workday occurring within a period of active duty for which he/she claimed. A maximum of four days of annual leave may be credited for each fiscal year. Any annual leave credited as a result of a technician's claim will be placed in a restored leave account in accordance with 5 U.S.C. 6304(d)(1)(a) and the restored leave must be used by the technician by the end of the leave year in progress two years after the date of restoration.
6. An alternative to filing claims under the Barring Act is to file under the Uniformed Services Employment and Reemployment Act (USERRA). However, it is unclear how far back in time a USERRA claim may reach. Therefore we cannot provide guidance concerning the time period in which a USERRA claim must be filed.
7. Information about filing claims under USERRA is available on the Internet in the "E-Laws" section of the Department of Labor's home page at www.dol.gov. An interactive system, "The USERRA Advisor," answers many of the most frequently asked questions.
8. It is unclear how long your claim will take to process with Defense Finance and Accounting Service (DFAS). Once your claim clears procedural and document review by our office and is forwarded for processing, we will be unable to assist with inquiries. Please monitor your leave and earning statements for restored leave credit.
9. For additional Department of Defense guidance, see posting at Civilian Personnel Management Service (CPMS) web site www.cpms.osd.mil. For additional California National Guard information see TAAI 04-061 posted at: http://www.calguard.ca.gov/cahr/taai_04.html.
10. If you need further assistance contact Lisa Nagata, Human Resources Specialist, at CAGNET 63601, DSN 466-3601 or (916) 854-3601.


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